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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,180	04/05/2007	Volker Gandert	10191/4029	9258
26646	7590	03/03/2009	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			LEUNG, KA CHUN A	
ART UNIT	PAPER NUMBER		3741	
MAIL DATE	DELIVERY MODE		03/03/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/565,180	GANDERT, VOLKER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ka Chun Leung	3741	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 December 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 8,9,11-13,15-17 and 19-21 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 8,9,11-13,15-17 and 19-21 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 01/18/2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/30/2008 has been entered.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 01/18/2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

3. Regarding paragraph 2 of the Final Office Action dated 09/03/2008 and paragraph 3 of Applicant's remarks filed on 12/30/2008, the four international references cited on 01/18/2006 have NOT been received from the Applicant and there is no indication on the record that these references have been received.

4. As indicated in the Final Office Action, JP 05-310119 and DE 33 03 455 have subsequently been cited, attached, and have been considered. WO 99/850112 was previously cited and attached as being an equivalent to EP 1 066 181 and the WO

99/850112 has been considered. However the actual foreign international references, DE 197 32 924 and EP 1 066 181, themselves are not presently part of the record and have not been considered.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 9, 15-17 and 19-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. In particular, Claim 9 and base Claims 15 and 19 recite the step of "releasing the at least one vehicle brake after an engine startup". The claims are rendered indefinite since it is unclear whether the step of releasing the at least one vehicle brake is performed regardless of whether the vehicle was stationary or not and subsequently whether the brakes were applied or not as a result.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 8, 9, 11-13, 15-17 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salecker et al (GB 2 317 660 A) as cited in the previous Office Action.

11. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balz et al (WO 99/50112) as cited in the previous Office Action.

### ***Response to Arguments***

12. Applicant's arguments filed 12/30/2008 with regards to Claims 8-14 rejected under 35 USC § 103 have been fully considered but they are not persuasive.

13. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "an automatic engine start is performed using a starter" as discussed on Page 5, Paragraph 3 and Page 7, second to last paragraph of the remarks) are not recited in

the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

14. The Applicant further notes in Page 6, Line 11 that the check performed "does not have to be carried out by the driver". While it is appreciated that the present invention does not require a driver or operator to perform these checks, as claimed the recited methods do not preclude the recited steps from being carried out by a human operator, nor does it preclude multiple operators and/or components from carrying out the recited steps. Therefore given the broadest reasonable interpretation, the "checking arrangement" could be a human operator which checks to see if the vehicle is stationary as he/she approaches the car or makes a final check while sitting in the car.

15. Additionally it is well known in the art that in vehicles with manual transmissions, the operator depresses both the clutch and brake pedals prior to starting the vehicle. The operator then actuates a key or pushes an ignition button to start the engine as is known in the art. With such ignition systems, the operator does not physically crank the engine, control the spark ignition or fuel injection amounts required for the actual starting of the engine and these steps carried out by the engine itself and thus can be considered as "automatically starting the engine". Thus the recited steps in at least Claim 8 could wholly be performed by an operator in the case where the vehicle is stationary. Alternatively, the "push start" method described in previous Office Actions would allow the operator to perform the recited steps in at least Claim 8 in the case where the vehicle is not stationary.

***Conclusion***

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ka Chun Leung whose telephone number is (571)272-9963. The examiner can normally be reached on 7:30AM - 4:30PM.
17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cuff can be reached on (571) 272-6778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ka Chun Leung/  
Examiner, Art Unit 3741

/Michael Cuff/  
Supervisory Patent Examiner, Art Unit 3741